

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

BKY 04-34793 DDO

Ch. 7

Robert J. Nelson,

NOTICE OF HEARING
AND MOTION FOR RELIEF
FROM THE AUTOMATIC STAY

Debtor.

TO: Parties in interest pursuant to LOCAL RULE 9013-3.

1. First State Bank and Trust (the "Bank"), by and through its undersigned counsel, moves the court for the relief requested below and gives notice of hearing.

2. A hearing on this motion will be held before the Honorable **Dennis D. O'Brien**, Courtroom 228A, U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota, at 9:30 a.m. on October 20, 2004, or as soon thereafter as counsel may be heard.

3. Any response to this motion must be filed and delivered not later than October 13, 2004, which is seven days before the time set for hearing (including Saturdays, Sundays, and holidays), or filed and served by mail not later than October 8, 2004, which is ten days before the hearing date (including Saturdays, Sundays, and holidays). UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.

4. This court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, FED. R. BANKR. P. 5005, and LOCAL RULE 1070-1. The proceeding is a core proceeding. The petition commencing this chapter 7 case was filed on August 17, 2004. The case is now pending in this court.

5. This motion arises under 11 U.S.C. § 362 and FED. R. BANKR. P. 4001. This motion is filed under FED. R. BANKR. P. 9014 and LOCAL RULES 9006-1 and 9013-1 to 9013-3. Movant requests relief from the automatic stay.

6. The Bank holds a lien on the following property of the debtor:

2000 Sea Ray 185 Bowrider Boat with 190 hp Mercury Motor Ser #V347Bk900

2000 EasyLoader Trailer 1L8KAAJA9YA041475

Certificates of Deposit #200002176 and #200002177

7. At all times material, the Debtor has been in default of the payments and performance obligations due to the Bank. As of the date of this motion, the Debtor is delinquent in the making of payments due July 2004 and thereafter.

8. If testimony is necessary as to any facts relevant to this motion, Pam Ford, an employee with the Bank, may be called to testify.

Wherefore, the Bank moves the Court for an order terminating the automatic stay with respect to the Bank's interest in the above-described real property, and for such other relief as may be just and equitable.

Dated: September 24, 2004

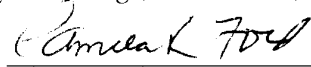
STEIN & MOORE, P.A.

/e/ Eric J. Sherburne
Eric J. Sherburne, #279389
Attorneys for Movant
46 E. Fourth St., Ste. 1010
St. Paul, MN 55101
651-224-9683
651-223-5212 fax

VERIFICATION

I, Pam Ford, an employee with First State Bank and Trust, declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Dated: September 22, 2004

A handwritten signature in dark ink, appearing to read "Pamela K. Ford", written over a horizontal line.

Pam Ford

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

BKY 04-34793 DDO

Ch. 7

Robert J. Nelson,

MEMORANDUM IN SUPPORT
OF MOTION FOR RELIEF
FROM THE AUTOMATIC STAY

Debtor.

First State Bank and Trust (the “Bank”) submits the memorandum in support of its Motion for Relief from the Automatic Stay.

ARGUMENT

Section 362(d) of the Bankruptcy Code provides, in relevant part, as follows:

On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay—

(1) for cause, including the lack of adequate protection of an interest in property of such party in interest; [or]

(2) with respect to a stay of an act against property under subsection (a) of this section, if—

(A) The debtor does not have an equity in such property; and

(B) such property is not necessary to an effective reorganization.

11 U.S.C. § 362. The Bankruptcy Code provides an opportunity for relief from the automatic stay for cause, including lack of adequate protection. 11 U.S.C. § 362(d)(1) The Bankruptcy Code also provides an opportunity for relief from the automatic stay with respect to property in which a debtor has no equity and which is not necessary to the debtor’s reorganization. 11 U.S.C. § 362(d)(2).

Cause exists for relief from the automatic stay under 11 U.S.C. § 362(d)(1). The interests of the Bank are not adequately protected. The standards for adequate protection in the Eighth Circuit are set forth in *In Re Martin*, 761 F.2d 472 (8th Cir. 1985). Continued use of the collateral and the passage of time result in depreciation of value. The Bank is not being compensated for this depreciation. Nor is the Bank being compensated for interest as it continues to accrue on the subject loans.

Pursuant to 11 U.S.C. § 362(g), the burden is on the debtor to prove the absence of cause or the existence of adequate protection.

Debtor is in default on the loan. The Bank has not been offered nor received adequate protection of its interest in the property. Such circumstances constitute cause justifying relief from the stay. *United Savings Assn. of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365 (1988).

WHEREFORE, the Bank requests the relief set forth in the accompanying verified motion.

Dated: September 24, 2004

STEIN & MOORE, P.A.

/e/ Eric J. Sherburne
Eric J. Sherburne, #279389
Attorneys for Movant
46 E. Fourth St., Ste. 1010
St. Paul, MN 55101
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**UNITED STATES BANKRUPTCY COURT
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In re:

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Ch. 7

Robert J. Nelson,

UNSWORN DECLARATION
FOR PROOF OF SERVICE

Debtor.

The undersigned, an employee Stein & Moore, P.A., declares that on September 24, 2004, she served the following:

1. Notice of Hearing and Motion for Relief from the Automatic Stay;
2. Memorandum in Support of Motion for Relief from the Automatic Stay; and
3. Proposed order

on each of the entities named below, by U.S. mail (unless otherwise indicated) by mailing to each of them a copy thereof by enclosing the same in an envelope with first class postage prepaid and depositing the same in the post office at St. Paul, Minnesota, addressed to each of them as follows:

Robert J. Nelson
Nelson Auto Clean, Inc.
5617 Omaha Ave. N.
Stillwater, MN 55082

Joseph A. Skokan
1675 Greeley Street, Suite 100
Stillwater, Mn 55082

Michael Iannacone, Trustee
8687 Eagle Point Blvd
Lake Elmo, MN 55042

U.S. Trustee
1015 U.S. Courthouse
300 S. 4th Street
Minneapolis, MN 55415

I declare under penalty of perjury that the foregoing is true and correct.

Dated: September 24, 2004

/e/ Christy L. Lattimore
Christy L. Lattimore

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:	BKY 04-34793 DDO	Ch. 7
Robert J. Nelson,	ORDER	
	FOR RELIEF FROM	
Debtor.	THE AUTOMATIC STAY	

At St. Paul, Minnesota this 20th day of October, 2004.

This matter came before the Court on a motion by First State Bank and Trust for an order for relief from the automatic stay. Appearances, if any, were noted on the record. Based on the motion, file, records, and proceedings herein,

IT IS ORDERED:

1. First State Bank and Trust is granted relief from the automatic stay of 11 U.S.C. § 362 with respect to real property described as follows:

2000 Sea Ray 185 Bowrider Boat with 190 hp Mercury Motor Ser #V347Bk900

2000 EasyLoader Trailer 1L8KAAJA9YA041475

Certificates of Deposit #200002176 and #200002177

2. Notwithstanding FED. R. BANKR. P. 4001(a)(3), this Order is effective immediately.

Honorable Dennis D. O'Brien
United States Bankruptcy Judge